

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF CITY OF HIGH POINT, NORTH CAROLINA**

These Comments are filed by City of High Point, North Carolina in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, City of High Point, North Carolina believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a "franchise" and our community has adopted a cable ordinance which operates in conjunction with the franchise agreement, the terms of which were negotiated with our cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

City of High Point, North Carolina is a NC City with a population of 90,000. Our franchised cable provider is Time Warner. Our community has negotiated cable franchises since the early 1980's.

**Our Current Franchise**

We have two franchise agreements. Our current franchise with Time Warner began on August 12, 1999 and expires on July 15, 2014. Our agreement with

LEXCOM began on May 2, 2005 and expires on March 1, 2014. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operators to pay a franchise fee to City of High Point, North Carolina in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

LEXCOM serves a small portion of the community adjacent to a neighboring County and we do not require them to provide PEG until such time as they apply to build out the total community. We require Time Warner to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to community access

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: Time Warner, as a great community partner with community information services offered to pay for the initial set up of the channel and provide \$12,000 to upgrade the community access channel. In addition Time Warner provided a fiber feed to City Hall which enabled our community access channel to provide direct video feed from City Hall.

Our franchise contains the following requirements regarding emergency alerts: Time Warner and our local community agreed that the national system of alerts serves our communities, however in a dire emergency Time Warner has agreed to allow local officials to broadcast emergency messages. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. We have a provision within the franchise to enforce the federal customer service standards. We require periodic reports necessary to insure compliance with the franchise agreement.

Our franchise contains the following reasonable build schedule for the cable operator: Build to 20 homes per mile in newly annexed areas with a cost share provision should there be less than 20 homes per mile.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Time Warner has upgraded the cable system to provide, high speed internet, telephone and cable television service. Our agreement provides that Time Warner maintain a state-of-the-art system and is based on economical feasibility of any upgrade.

Our franchise contains the following insurance and bonding requirements: Two million general liability, one million auto liability and a \$25,000 performance bond (Time Warner). No performance bond is required of LEXCOM until such time as they build out the City.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The City has the right to inspect any facet of construction of the cable system located within the City; has the right to audit franchise fees and books and records necessary to insure compliance with the franchise agreement; and has a penalty clause in which there is a formal appealable process, with cure notices and sufficient time to correct problems before penalties are assessed.

### **The Franchising Process**

The cable system serving our community also serves the local municipalities within our City. In 1998 - 1999 our community worked together with approximately three other communities to issue a cable franchise to Time Warner. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: The terms of the franchise agreement are controlling except if state or federal law overtakes any6 of the provision, then by mutual agreement we modify the franchise agreement. This is done by amendment to our franchise and NC statutes require the franchising authority to consider any changes at two meetings before adoption.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: In our community we abide by federal statute and offer the public an opportunity to comment on past and current performance by the cable operator, discuss any cable matter and have a voice in stating the cable related needs of the community through a public hearing process. The cable operator is in attendance and it is a great opportunity for the public to hear first hand future plans, current operations and to learn how local governments operate. NC statutes require that any franchise or change to a franchise be read and adopted at two regularly scheduled meeting of the franchising authority.

### **Competitive Cable Systems**

Our community has not been approached by a competitive provider to provide service.

- Has not denied any provider the opportunity to serve in our community.
- Does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

### **Conclusions**

The local cable franchising process functions well in City of High Point. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours; to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

City of High Point, North Carolina therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of High Point, North Carolina

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January 11, 2006

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